IN THE MATTER OF THE FACT FINDING PROCEEDINGS

[Pursuant to California Government Code Section 3548.1 (a)]

BETWEEN

FF-597

COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT

AND

COLLEGE OF THE SEQUOIAS TEACHERS' ASSOCIATION

COLLEGE OF THE SEQUOIAS TEACHERS' ASSOCIATION
Union/Petitioner

and

COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT
Employer/Respondent

PANEL DECISION

CSMCS No. 02-2-351
PERB Nos. SA-IM-2671 -E
SA-RR-295-E

Date of Hearing: April 29, 2003

FACT FINDING PANEL MEMBERS

For the Union/Association:

ALAN J. FREY
Staff Consultant
Community College Association
5959 Greenback Lane, Suite 430
Citrus Heights, CA 95621

For the Employer/District:

JOSEPH P. ZAMPI
Law Firm of Zampi and Associates
225 Broadway, Suite 1450
San Diego, CA 92101

Chairperson:

JOE H. HENDERSON
Arbitrator/Mediator
PO Box 463
Santa Rosa, CA 95402

TABLE OF CONTENTS

PAGE

RESPONSIBILITIES OF FACT FINDING PANEL
Government Code section 3548.2

Fact Finding Panel assignment is to thoroughly review the presentations, carefully consider the information and arguments, and make its recommendations pursuant to the criteria set forth in Government Code section 3548.2. The Fact Finding Panel should consider, weigh, and be guided by all the following criteria:

1. State and Federal laws that are applicable to the Employer.

2. Stipulations of the parties.

3. The interests and welfare of the public and the financial ability of the public school employer.

4. Comparison of the wages, hours, and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in the public school employment in comparable communities.

5. The Consumer Price Index for goods and services, commonly known as the cost of living.

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally and traditionally taken into consideration in making the findings and recommendations.

The information and data in this written presentation relate directly to the seven (7) statutory criteria set forth above. The statutory criteria listing financial ability and Consumer Price Index will apply to monetary issues only.

NEGOTIATIONS HISTORY

First Session

The College of the Sequoias Community College District ("District") and the College of the Sequoias Teachers' Association ("COSTA") first met to negotiate the terms of a successor contract to the 2000-03 Faculty contract on December 5, 2001. According to the 2000-03 CBA between COSTA and the District, the parties would reopen the issue of compensation if the District received "growth money" in 2001-2002. Article 9, section 1.2 provides that "[f]or the 2001-2002 academic year, the Academic Salary Schedule shall be increased ... with openers for salary when monies are received from the State."

COSTA made an inquiry regarding whether the District received any "growth" money for the 2001-02 fiscal year. The District explained that in order for COSTA to obtain growth funds, the District needed to meet its growth target. Incidentally, the District did not meet the 2000-01 target. "Growth over cap" allows for money to be used when unspent from other districts. COSTA considered limiting 2002-03 openers if the "sunshine" is before April.

Second Session

The second session was held on December 12, 2001. An "Analysis and Growth Funding" document was provided to COSTA, which showed the 2001-02 income for 2000-01 growth. This document indicated that the District's 2001-02 income for 2000-01 growth was deficited because of the state's overpayment in 2000-01; for 2001-02 the District's appropriation is less by $93,000. Estimated budgeted growth is filed in May prior to the year of the budget. COSTA inquired whether the District would grow for 2001-02 or be penalized. The District explained that any forgiveness of a penalty would only affect revenue for 2002-03.

Third Session

The third session was held on February 26, 2002. An updated financial data sheet showed that the District lost about $1.58 million dollars of state money due to ERAP (Expedited Remedial Action Program) and local property tax. Based on the District's loss in funding, the District offered COSTA $45,000, which represents one-half of the District's growth money. COSTA counter offered for a 3% salary increase retroactive to August 1, 2001.

Fourth Session

The fourth session was on March 6,2002. The District explained that its proposal from the prior session was based on FTES for 2002-03. The 2002-03 budget is based on a FTES number of about 8400. In response, COSTA proposed (1) a 3% increase for 2001-02 effective August 1,2002, (2) a 1.8% COLA increase for 2002-03, and (3) a contingency for growth at 3% if 8400 FTES growth is achieved. Additionally, COSTA bargained for a rollover contract.

Fifth Session

The fifth bargaining session was held on April 3, 2002. The District presented its FTES enrollment calculation. The District proposed that for 2002-03 fiscal year that WSCH/FTEF should be set at 480, and the budget for FTEF should be built on 8400. The District also explained that its projected budget deficit at that time was about $1,359,151. COSTA counter offered with a 2% increase for 2001-02 effective August 2001, and an exchange of proposals for the 2002-03 fiscal year.

Sixth Session
The sixth session was held on April 10, 2002. The District presented its proposal and explained the one-half percent on cells where faculty would not have step movement. In response, COSTA proposed (1) growth money of 1.65% for the 2001-02 fiscal year effective August 2002 on the entire schedule, and a one year rollover contract that includes COLA. The District asserted that it was unacceptable.

Seventh Session
The seventh session was held on April 29, 2002. COSTA proposed a 1.25% increase for 2001-02, overload, and a step 5 effective August 2002. For the 2002-03 fiscal year, COSTA proposed a WSCH Advisory Committee, a COLA increase, and a rollover contract. For the 2003-04 year, COSTA offered for, COLA, a percentage growth from the prior year, and a rollover contract.

Eighth Session
The next bargaining session was held on May 13, 2002. At the conclusion of this bargaining session the parties mutually declared impasse. During this bargaining session, the District sought contingency language protection because of District's anticipated expenditures the 2002-03 and a 37% District increased cost in health insurance.

Ninth Session
The ninth bargaining session was held on June 24, 2002. The District offered COSTA a .75% increase effective August 1, 2002, which would be payable on January 2003 but retroactive to August 2002. The District proposed the increase would take place if contract bargaining public notice (sunshine) commenced on January 2003, and the .75% increase would be paid to the extent that the State provides growth money. COSTA declined.

Tenth Session
The tenth bargaining session was held on August 27, 2002. COSTA countered the District's June 24, 2002 proposal by offering a retroactive date of August 1, 2001, instead of the District's suggested effective date of August 1, 2002. COSTA countered with 1% + $300 stipends to each faculty member. The parties reached a tentative agreement on August 27, 2002 subject to ratification and approval by both parties.

Eleventh Session
The eleventh session was held on November 13, 2002. The District had discovered deficits approximately $2.2 million from adjunct/overload and property taxes after the last session on August 27, 2002. The District reported to COSTA that as a result the Board decided to decline the Tentative Agreement of August 27, 2002.

POST-IMPASSE PROCEDURES

The District filed a REQUEST FOR IMPASSE DETERMINATION/ APPOINTMENT OF MEDIATOR with the PERB on May 23, 2002. After mediation was unsuccessful in resolving the parties' dispute, the mediator, Ronald E. McGee, certified the matter to fact finding on November 20, 2002.

The Fact Finding Panel is comprised of Chairperson Joe H. Henderson, Joseph P. Zampi for the District, and Alan J. Frey for the Association.

INTRODUCTION

The College of the Sequoias Community College District (District) and the College of the Sequoias Teachers' Association (Association) are at an impasse over the Reopeners to the 2000-2003 Collective Bargaining Agreement.

After complying with the Public Notice provisions of California Government Code section 3547 with respect to initial proposals, bargaining began on December 5, 2001. The parties reached impasse in negotiations on May 13, 2002.

On August 27, 2002, the parties reached a tentative agreement subject to ratification and approval by both parties. The Board declined the Tentative Agreement choosing not to ratify the tentative agreement. The decision was based on a report received from the state on or about September 5, 2002. The report revealed a deficit of $1.2 million for adjunct/overload, and a $1 million deficit for property taxes.

UNRESOLVED ISSUES

The issue is focused: 2002 had a salary opener, was the agreement reached in good faith. Does the District have the obligation to meet the terms of the agreement?

The 2000 - 2002 agreement reads as follows:

9.1.1 Academic Salary Schedule/2001-2002

9.1.1.1 Effective August 1, 2002 the Academic Salary Schedule shall be increased by 1.0%. Additionally, each faculty member of the bargaining unit in paid work status on the date this agreement is ratified and approved, shall receive a one-time non-repetitive stipend in the amount of $300.

9.1.2 Overload Salary Schedule

9.1.2.2 Effective August 1, 2002 the Faculty Overload Salary Schedule shall be increased by 1.0%.

The parties at the hearing pointed out that the cost of the increase being sought is:

176 Faculty members x 300=	$52,800
1% on salary scale	118.371
TOTAL	$171,171

ABILITY TO PAY ARGUMENT RAISED BY THE DISTRICT

The **District** asserts that the following matters are relevant to the Ability to Pay issue:

- State Budget Cuts Impact District Severely
- Reserve Monies And Discretionary Funds Must Be Put To Uses Other Than Funding
- Fund 29
- District Reserves Should Not Be Used To Fund Salary Schedule Increases
- Increased Cost Of The Association's Current Proposal
- Deficit Spending Would Ultimately Spell Economic Disaster For The District
- Conservative Budgeting Prevents Economic Disaster Experienced By Governmental Entities Such As Orange County
- Built In Salary Increases Through Longevity
- Comparison Of Total Compensation Proposals
- Three-Year Financial Projection Shows Deficits

The **Association** argues that:

- Estoppel should prevent the District from claiming an ability to pay defense.
- The argument was raised after the agreement was negotiated
- The College of Sequoias now claiming poverty raises the specter that the district never bargained in good faith and had they done so would have afforded the Association the ability to counter the claim.
- The District did not establish that it suffers a true inability to pay but merely offered that it had different priorities for the more than adequate resources available.
- At the time of the fact-finding hearing the district had sent layoff notices to the equivalent of eighty-five full time faculty members, Assuming that the average salary is $50,000 the district will be saving over four million dollars.
- There are nine confirmed retirements would make a savings of an additional four hundred fifty thousand dollars.
- The District has a reserve of in excess of 10 million dollars.
- The governor's May revised budget restored significant amounts to the community colleges, making the districts claim of an inability to pay unsupportable.
- The evidence does not support the District's claim of an inability to pay.

DISTRICT POSITION AND ARGUMENTS

This fact finding proceeding deals with issues, which are extremely important to the College of the Sequoias. The decisions and findings of this Fact Finding Panel will have significant bearing on the financial future of the District and the standard of education offered by the District.

COMPARABLE EMPLOYERS

The District has considered comparable employers in taking its position on each of the issues subject to this fact finding. This consideration is consistent with its obligations under Government Code section 3548.2(4). The faculty is being paid a salary that is consistent with the salaries paid by the comparable districts.

Traditionally, the District has looked to selected comparable districts for economic and non-economic comparable data. For economic and non-economic comparison, the District believes the most comparable employers include those in the geographic area of the College of the Sequoias Community College District.

The District believes that these employers are comparable employers because:

1. The District frequently compares itself to other districts in the Tulare County geographic area of the State of California and those other districts selected from other regions of the state.

2. The general duties of certificated employees are similar in the comparison of the Tulare County geographic area districts and other neighboring counties.

3. The general operations and educational programs are similar in comparison to the Tulare County geographic area districts and other neighboring counties.

4. The working conditions of employees of comparison districts in the Tulare County geographic area and other districts are more consistent with the working conditions of employees of the College of the Sequoias Community College District.

5. The applicant pool for certificated positions is within the geographic region of the Tulare County geographic area comparison districts.

6. The Consumer Price Index is consistent among the selected comparison districts in the Tulare County geographic area.

7. Certificated employees at other Central Valley districts have comparable costs of living.

//

//

COMPARABLE DISTRICTS
CENTRAL 14 DISTRICTS (Fall 2000)

Community College Districts	Enrollment
Allan Hancock Joint Community College District	10,500
Cabrillo Community College District	14,000
College of the Sequoias Community College District	10,300
Gavilan Community College District	4,600
Hartnell Community College District	7,898
Kern Community College District	19,840
Merced Community College District	15,000
Monterey Peninsula Community College District	12,000
San Joaquin Delta Community College District	17,619
San Luis Obispo Community College District	9,229
State Center Community College District	28,638
West Kern Community College District	5,000
West Hills Community College District	2,900
Yosemite Community College District	19,349

DISTRICT'S BACKGROUND POSITION REGARDING ENTITLEMENT

ARTICLE XXI COMPENSATION

Section 21.1.2: Yearly Raises

2001-2002 The parties tentatively agreed on August 27, 2002 to an additional academic salary schedule increase and a faculty overload salary schedule increase effective August 1, 2002. This salary increase is in addition to the 3.87% increase that the District has already implemented for 2001-02. However, the District is unable to implement this tentative agreement because the District received a report on September 5, 2002, which revealed the District's current substantial deficits. The report indicated a deficit of 1.2 million dollars for adjunct/overload and another deficit of 1 million dollars for property taxes.

ASSOCIATION	DISTRICT
In addition to the 3.87% salary increase that the District has already implemented for 2001-02, the Association proposes an additional 1 % increase to the Academic Salary Schedule effective on August 1, 2002. Each faculty member shall also receive a one-time non-repetitive stipend of $300.	The District's position is that it is unable to pay any additional monies in excess of the 3.87% increase for 2001-02 due to the District's current substantial budget deficits and in order to avoid bankruptcy and more layoffs,

The total compensation offered by the District for 2001-2002 is 7.67% (salary 3.87%, step/column 1.75%, health and welfare 2.05%). The Association has proposed total compensation increases for 2001-2002 of an additional 1.43% above the District's offer. The Association's total compensation, comprised of 1% + $300 to the Academic Salary Schedule and Faculty Overload Salary Schedule, 1.75% step and column, 2.05% health and welfare, and a 3.87 % salary increase, equals a 9.10% increase overall.

The Association has made this demand despite the fact that the District must reduce its budget by $1.5 - $1.7 million in 2002-03 to compensate for state budget cuts, and the District already is currently in a substantial budget deficit of $1.2 million for adjunct/overload and another deficit of $1 million for property taxes. In view of the District's consistent and competitive salary increases over the past several years, has initiated layoffs and the reduction and/or elimination of academic programs, and the fact that the District is on the verge of bankruptcy, this extraordinary demand cannot be justified. The Association's salary demand would result in:

- a slight increase in each teacher's salary but a large increased cost to the District that the District likely cannot even pay
- increases for future years which outstrip cost-of-living statewide
- District commitment to future obligation at a time when revenues are uncertain and the District is on the verge of bankruptcy
- continued deficit funding of the future obligation
- risk that the College's general fund balance will dip below the Chancellor's "minimum reserve level" of 3%, and consequently the College could be placed on the state's "watch list"
- increase the number of layoffs and reduction/elimination in academic programs.
- the Association's proposal would result in increased cost to the District of $171,171.

DISTRICT'S FISCAL HEALTH ANALYSIS

According to the District's "Fiscal Health Analysis and Evaluation of Internal Controls" Report prepared by Management Consulting Services, the fiscal risk assessment of the District is high with respect to payment of salaries. The report explained that:

For three of the last five years, the College has been deficit spending in the general fund

...The deficit for the 2001-02 year was significant enough to drop the College's ending balance below the Board's 6% policy and the state's 5% guideline ... Labor difficulties ... can negatively impact the College's fiscal stability. The College is currently in negotiations with all three of the employee bargaining groups for the current year ... Collective bargaining should never place the College in a fiscally precarious position ... [However, this is a real danger here because] [a]s is typical in a service industry, salaries and benefits command the lion's share of every college's expenditure.

Fiscal Health Analysis and Evaluation of Internal Controls, Bua, Director & Twomey, Director & CPA, Management Consulting Services (Jan. 2003), p. 30 - 32.

The report further analyzed that certain factors are indicators of fiscal crisis. These factors include, but are not limited to, labor difficulties and deficit spending and declining fund balance. Fiscal Health Analysis, supra, at p. 29. The report analyzed that the District has all of the above problems - labor difficulties, deficit spending, and declining fund balance. Fiscal Health Analysis, supra, at p. 30. As such, the District already is in fiscal crisis.

The District is expecting even greater economic disaster for at least the next two (2) years. The Governor plans to cut between $160 - $198 million from the community college budget. (Community College League of California. State Budget Update # 9 (2/28/03).) The Governor's proposed budget plan involves the suspension of statutory COLA on apportionments and workload categorical programs for the fiscal year 2003-04. (Id.) The state will not reimburse a portion of the state's mandated costs to the District. Property taxes will not be backfilled which will lead to the reduction of state funding to the District. Moreover, the Governor proposes a 3.66% across-the-board cut in all line items. The Assembly proposes that this 3.66% across-the-board cut will include enrollment growth. (Community College League of California, State Budget Update #4 (1/24/03).) The state's budget cut to enrollment growth would reduce the current year growth rate to 2.89%. (Id.) The state budget cuts impact the District's budget severely. The District's loss of state funding will result in a $1.493 to $1.7 million reduction in the budget for 2002-03. For the following year, the District will need to further reduce its budget by an additional $1.5 million. In sum, the District's budget will be reduced by *at least* a total of $3 million. For 2002-03, a $1.493 million reduction means a comprehensive 4% reduction to the District's unrestricted budgeted items, including salary. Based on the District's growing financial crisis and the faculty's above-median position in the salary ranking among comparable districts, the Association will not be able to prove that it is entitled to a salary increase.

TEACHER COMPENSATION INCREASES

For numerous reasons, the Association's burden to prove its entitlement beyond the compensation offered by the District is not only a difficult one but virtually impossible. From 1995 through 2000 and projecting for 2001-2002, the College of the Sequoias Community College District will have provided compensation increases to teachers of an approximate annual average of 6.84% This figure includes calculations for step and column advances, health and welfare increases, and salary schedule increases.

During the same period, the Consumer Price Index (CPI), All Urban Consumers measured an average annual increase of 2.68%. The District annual average increase of 6.84% is nearly twice that of comparable workers generally, as measured by the CPI.

The Association is not entitled to the compensation demanded because District teachers have received salary increases at a rate almost double the CPI over several years.

FACULTY TOTAL COMPENSATION

	Salary Schedule Increase (%)	Step Longevity (%)**	Health & Welfare Cost Increase (%)	Total % Compensation	CPI (%)
95-96	3.07	1.7	0	4.77	1.4
96-97	3.56	2.11	0	5.67	2.3
97-98	5.50	1.7	.42	7.62	2.0
98-99	4.76	1.7	.22	6.68	2.5
99-2000	3.91	1.7	.57	6.18	3.1
2000-01	6.00	2.04	1.23	9.27	4.3
2001-02	3.87	1.75	2.05	7.67	3.0
		12.7	Totals	47.86	18.6
		1.81	Average/Year	6.84	2.68

PERCENTAGE INCREASE IN SALARY SCHEDULE BY COMMUNITY COLLEGE DISTRICT

Graphs represent the increase in salary schedule for the 2001-2002 fiscal years in each of the Central 14 community college districts. As the data demonstrates, COSTA has received salary schedule increases placing it above or significantly above average in comparison to the remaining Central 14 community college districts.

The College of the Sequoias Community College District holds the top ranking for Master Step-One salaries. Additionally, the College of Sequoias ranks fourth for salaries at the Non-Doctorate Step Ten level; ranks fifth at the Non-Doctorate Max, No Longevity; ranks sixth at the Non-Doctorate Max, with Longevity; and ranks sixth for Highest Earnable Salary.

FACULTY TOTAL COMPENSATION

The Educational Employment Relations Act requires that fact finders give consideration to statutory criteria, one of which is "TOTAL COMPENSATION." TOTAL COMPENSATION includes the percentage increase to the salary schedule, a percentage of salary attributable to step and column movement by employees of the district, and additional cost of health and welfare calculated as a percent of salary.

When TOTAL COMPENSATION is compared to the Consumer Price Index (CPI) for each of the past six years, the following dramatic observations are made:

- Each total compensation year exceeds the Consumer Price Index for that year.

- The total compensation increases for the seven year period was 47.86% as compared to the Consumer Price Index adjustment for the same period of 18.6% (compensation increases more than doubled the CPI for the same period).

- The average total compensation increase for each of the last seven years was approximately 6.84% while the average Consumer Price Index increase was less than one-half that amount at 2.68%.

- In addition to the 3.87% salary enhancement, the Faculty's Total Compensation package includes a 1.75% step/column enhancement and a 2.05% health and welfare enhancement. Therefore, for 2001-2002, the District's Total Faculty Compensation package offer equals 7.67% (3.87% + 1.75% + 2.05% = 7.67%)

TOTAL COMPENSATION VERSUS CPI

Graph demonstrates the value of the total compensation packages the Board of Trustees has offered its professional staff, years 1995-1996 through 2001 -2002. Consistent with the Board's commitment to prioritize funding to support its professional staff, the Board has consistently provided compensation at between double and triple the CPI increase for any given year. The Board's compensation package for 2001-2002 more than doubles the CPI adjustment for the same period.

EXCELLENT WORKING CONDITIONS

Teachers in the College of the Sequoias Community College District work 175 days out of a possible 250 days worked by many other Americans. (CALTrans, http://www.dot.ca.gov) The District currently has approximately 12% full time equivalent (FTE) teaching positions with a top salary schedule amount at or above $81,996. Paid insurance benefits for teachers include fully paid health insurance, dental insurance, and vision insurance for a total *cost to the* District of $10,690 per teacher. Starting salaries are $39,819 or approximately $50,509 when adding the cost of health benefits, for a 175-day work schedule. The top paid teacher currently earns $92,686 in compensation when considering other health insurance benefits working 175 days per year.

During the 2001-02 school year, more than 85% of the District's budget was needed to pay for all District employee wages and benefits; more than half of the District's entire budget is allocated for teachers' salary and benefits alone.

The Association is not entitled to the compensation demanded because the Association has already received a 3.87 % salary increase in an economy that has almost no inflation. When this 3.87 % salary increase is coupled with the average step/column increases, and health and welfare increases, the total compensation for 2001-2002 is 9.76%. Additionally, district teachers presently have excellent working conditions and receive total compensation that constitutes more than one-half of the District's annual expenditure.

EMPLOYEE INSURANCE BENEFITS COSTS

The Fiscal Health Analysis and Evaluation of Internal Controls Report recognized that the financial risk assessment of the cost of the District's medical plan is high. The report analyzed that:

The cost of the College's medical plan increased 37% this plan year, partly due to increased utilization ... This type of increase is expected to continue for at least the next couple of years. The College's health plan is an 80/20 arrangement with no cap on the employer contributions, and includes coverage for dependents. The employee does not contribute to the cost of the premiums.

(Fiscal Health Analysis, supra.)

A substantial part of the more than 85% of the budget spent on employees' salaries and benefits is attributable to expenses related to fully paid health and welfare insurance benefits covering employees' needs. The District's contribution toward health insurance and other benefits covering teachers is $1,881,486 per year.

The cost of retiree insurance ($631,105) is also a major element of the District's budget. This costly post-employment insurance provides substantial benefits to retiring teachers which must be calculated into existing budgets. The cost of retiree benefits for certificated bargaining unit members will continue to represent a substantial cost to the District over many years to come.

The Association is not entitled to the compensation demanded because, in addition to paying salary according to the schedule, the District pays in excess of $2.5 Million per year for teachers' and retirees' insurance benefits. (Actual amt. $2,512,591)

BENEFICIAL EMPLOYMENT

The community of Visalia provides a small town atmosphere with an estimated population of 75,636 residents in 2002. (State of California, http://www.ca.gov) For residents of Visalia, the District offers one of the best sources of employment opportunities.

In 2002, the average household income in Visalia was $36,361. (Visalia Chamber of Commerce, http://www.visaliachamber.org). By comparison, a new District teacher at the lowest pay level on the salary schedule earned $39,819 plus health and welfare benefits worth $10,690 for a total salary of $50,509. Thus, in 2002, the lowest paid teacher in the District earned more than the entire average household in the community.

Lowest pay is not the end of the comparison, however. Teachers who accept employment with the District tend to stay, consequently increasing their salaries through years of service. During the 2001-02 school year, a full 12%of the District's teachers are in the top step-and-column placements.

All of these factors - the small town atmosphere, the natural amenities of nearby national parks and forests, and the appeal of employment with the District - combine to make Visalia a desirable place to live and the District an attractive employer.

When considering the proposals made by the Association and by the District, the panel members should consider the continuity and stability of employment enjoyed by District teachers with a perspective which includes a broad community view. Residence in the community of Visalia alone is a benefit.

The Association is not entitled to the compensation demanded because, taken in combination with a salary and other working conditions which allow even new District teachers to live in the community in above-average comfort, the overall compensation presently received is ample to support a desirable lifestyle for members of the bargaining unit.

ABILITY TO PAY

The District has limited ability to pay the salary schedule increases demanded by the COSTA for a variety of reasons, all within the statutory criteria which must guide this fact finding proceeding.

STATE BUDGET CUTS IMPACT DISTRICT SEVERELY

The State is currently facing a 35 billion dollar budget deficit. This deficit continues to grow and has resulted in economic disaster for school districts. For instance, in "the 2002-03 year, colleges which grew had [a state monetary imposed] challenge: growth funding statewide was effectively deficited almost 30%." (Fiscal Health Analysis and Evaluation Internal Controls. Bua & Twomey, Management Consulting Services (Jan. 2003), p. 13.) With the state's growing budget deficit, even greater economic disaster for school districts is imminent because the state will continue to deficit other state apportioned monies to school districts.

The Community College League of California reported that: The Governor's 2003-04 state budget plan would cut more than $1 billion from support of student instructional and essential student service programs over the next eighteen months. This is in addition to the 60,000 unfunded full-time equivalent students that are currently being served by the colleges with no funding from the state. The projected costs also do not include several increased mandates imposed on districts by the Legislature and Governor in recent years.

(Community College League of California, State Budget Update # 3 (1/17/03).) With respect to community colleges specifically, Governor Davis has proposed to cut between $160 - $198 million from the community college budget in the 2002-03 fiscal year. (Community College League of California. State Budget Update # 9 (2/28//03).)The Governor's proposed budget plan involves a budget-year cut of $524,017,000 for 2003-04, and the suspension of statutory COLA on apportionments and workload categorical programs for the fiscal year. (Id.) The state will also not reimburse a portion of the state's mandated costs to the District. Property taxes will not be backfilled which will lead to the reduction of state funding to the District. (Community College League of California. State Budget Update # 4 (1/24/03).) Moreover, the Governor proposes a 3.66% across-the-board cut in all line items. (Id.) The Assembly proposes that this 3.66% across-the-board cut includes enrollment growth. (Id.) The cut to enrollment growth would reduce the current year growth rate to 2.89%. (Id.)

The state budget cuts affect the District's budget severely. The District's loss of state funding will result in a $1.493 to $1.7 million reduction in the District's budget for the 2002-03 fiscal year. For the following year, the District will need to further reduce its budget by an additional $1.5 million. In sum, the District's budget will be reduced by at least a total of $3 million. For 2002-03, a $1.493 million reduction means a 4% reduction in unrestricted budgeted items, such as salary. The District has already taken measures to implement the District's budget cuts. These measures include, but are not necessarily limited to, a hiring freeze, refinancing of Certificate of Participations, cancellation of sabbaticals, reduction in supply budgets, and reduction in student help budgets. (State of COS Welcome Back Report.) The District has also passed a resolution to lay off approximately 85 full time equivalent teachers. The following programs are facing reductions or possible eliminations in order to further compensate for the state's budget cuts: agriculture, biology, business, English/literature, art, drama/theatre, foreign language, child development, journalism, drafting, electronics technology, library services, nursing, physical education, engineering, administration of justice, anthropology, economics, social science, psychology, DSP&S, and counseling services. ("COS Braces for Major Cuts", The Campus. Issue 16, (3/6/03).)

Other complications include the Assembly's proposal to defer state June apportionment payments by a couple of weeks each year until Proposition 98 starts growing again. (Community College League of California. State Budget Update # 4 (1/24/03).) The Community College League of California cautions that the "deferral mechanism is a one-time strategy, and could not be repeated again next year (other than rolling the same 02-03 deferral into 04-05." (Id) (Community College League of California. State Budget Update # 5 (1/31/03).) "The senate's plan cuts $141 million in the current year, while the Assembly plan cuts $132 million, but also defers $150 million from the June cash payment to districts until July. College advocates oppose the deferral, fearing that it only increases the magnitude of cuts in the 2003-04 state budget." (Id)

In addition to these factors which contribute to the state budget's crisis, a pending lawsuit exists "that challenges the ability of the State Controller to distribute funds to various entities, including community colleges, without the authorization provided by a state budget. The Court of Appeal for the Third District ... found that there was no such authorization, meaning that without a budget or other specific legislative authorization, no funds could be provided to community college districts. The California Supreme Court agreed to hear an appeal of the case ... A final decision is likely before the beginning of the new fiscal year on July 1. Thus if the Supreme Court upholds the Court of Appeal's ruling before a budget is enacted, monthly cash payments to community college districts will be threatened." (Community College League of California, State Budget Update # 6 (2/7/03).)

Faced with the current instability of the state economy, the District can no longer agree to salary increases, such as the August 27, 2002 tentative agreement, without determining and preparing for the impact of current spending patterns on future years. The Fiscal Health Analysis and Evaluation of Internal Controls Report stated that:

... the college does not prepare comprehensive multi-year financial projections to determine the impact of current spending patterns on future years. While historically this has not been unusual for community college districts, *with the current financial condition of the College and the state,* as well as the continuing requests for bargaining unit contract modifications which cost the College in the current and future years, the need for multi-year projections is even more critical... Past practice has been to allow budget accounts to run negative and then the Budget Office would backfill them.

(Fiscal Health Analysis, supra.) To prepare for the impact of current spending patterns on future years, the District can no longer engage in this practice and has completed a two (2) year projection of the District's budget. This projection shows that the District will incur *at least* a $3 million reduction in the District's already deficited budget. As such, the District cannot agree to any salary increases, because such an increase would inevitably result in budget accounts running negative.

Again, the District calls upon the Fact Finding Panel to carefully structure its findings and recommendations so as not to go beyond the ability of the District to pay salaries from its projected revenues. The adverse impact caused due to deficit spending should guide the Fact Finding Panelists away from recommending a recipe for economic disaster for the District.

RESERVE MONIES AND DISCRETIONARY FUNDS MUST BE PUT TO USES OTHER THAN FUNDING ONGOING SALARY SCHEDULE INCREASE COSTS

The District's reserve monies will be needed in future years for spending items such as school construction cost overruns, health insurance for employees and for retirees, unanticipated use of accumulated sick leave, and items requested but not budgeted for in the 2002-2003 school year.

School Construction Costs

In examining the District's school construction costs, the Fiscal Health Analysis and Evaluation of Internal Controls Report indicated that:

The College's facilities master plan to guide the construction and modernization of buildings, classrooms, and labs, and even the potential acquisition of additional property/sites ... did not address the funding requirements as they relate to obtaining state resources to implement the facilities plan ... The College currently has approximately 18 capital projects in various phases ... While all of the projects will improve the facilities of the College to some extent, it is not clear that the projects selected, or that their... funding were established based upon a cohesive plan ... Further, without such comprehensive planning, the College runs the risk that projects undertaken ... may not be sufficiently funded.

Fiscal Health Analysis, In order to be prepared for the risk that these projects were not sufficiently funded, the District must accumulate enough reserve monies to adequately fund these projects.

Health Premium Costs

The District will also need reserve monies to compensate for rising health premium costs in future years. The July 26, 2002 Fiscal Report published by the School Services of California, Inc. explained that "it is likely that double-digit costs will increase for the next 10 years." ("Experts Conclude Health Premium Costs to Escalate for the Foreseeable Future", The Fiscal Report, School Services of California, Inc. (7/26/02) Vol. 22, No.15.) The cost of prescription drugs will also grow approximately 15.2%, the highest annual percentage change per capita in health care funding in the 2002-03 fiscal year. (Id) The CEO of Kaiser Permanente warned that premium costs reductions that were available in the early 1990's would likely not be available again. Health benefit experts recognize that no easy cure exists for the high cost of medical care and the resulting increase in premium costs to employers. (Id) The School Services of California concluded in its report that "cost increases for school district employers ... are unfortunately likely to continue to outstrip school district revenues and [thus] painful employee negotiations ... seem almost inevitable." (Id) Based on the findings in this report, the District should be prudent in its employee negotiations and accumulate enough reserve monies to meet the inflationary cost increases for health benefit premiums.

Potential Expenditures from the Unappropriated Reserve

The District's reserve monies will be needed for various future expenditures as discussed above. A few of the future expenditures, illustrated on the following pages, include school construction, health insurance for employees and for retirees, use of accumulated sick leave, and items requested but not budgeted for the 2002-03 school year.

Reserves for Contingencies

Pursuant to authority found in the Education Code, the State Department of Education sets standards and criteria for evaluating District budgets, including comparison and review of expenditures and reserves. Accordingly, the Department restricts District expenditure on any classification to the amount budgeted for that classification.

The District administrators have severely limited discretion to dip into reserves to satisfy any obligation which exceeds the budgeted amount. Despite the District's limitation, "[t]he deficit for the 2001-02 year was significant enough to drop the College's ending balance below the Board's 6% policy and the state's 5% guideline." Fiscal Health Analysis, supra, at p. 30. Facing the risk of continued deficits, prudent board members, aware of risks associated with depleting reserves, will be much less likely to approve a transfer of reserve monies if the reserve funds are low. Thus failure to maintain strong reserves will place a greater burden on the District to find contingency funding in future years.

FUND 29

The District's Fund 29 is a reserve for the District's obligation to pay its current employees, retirees, and future retirees health and welfare benefits. Approximately $4 million has been accumulated in this reserve fund, a portion of which is dedicated to retiree health and welfare benefits. The District's auditors perform an actuarial valuation of Fund 29 every three (3) years, and the last audit report was based on an Actuarial Valuation as of June 30, 2000. According to this report, the District had accumulated an accrued but unfunded liability of $7,665,948 in retiree health and welfare benefits. (AB3141 Actuarial Valuation as of June 30. 2000. (4/4/01) Deloitte & Touche, p. 2.) For current retirees, this unfunded liability represents $4,308,820; and for future retirees, this unfunded liability represents $3,357,128. (Id.) The majority of the Fund 29 plan participants were from current and retired faculty, as opposed to the classified and other groups. (Id) at p. 10.)

Effect of Rising Cost of Health Care on Fund 29

Since the auditor's last valuation, the District had experienced an actuarial loss, because the auditors explained that the "discount rate has been lowered from 7% to 6% ... [and] health plan rates have increased by approximately 30% versus the assumed increase of 24%." (Id. at p. 3.) In other words, the District's liability grew partly because of the increased cost in health care. As a result, the District had less money accumulated in Fund 29 than was expected. In this 2000 report, the auditors only expected that health care costs would increase by no more than 10% per year for the next ten years. (Id. at p. 14.) However, the auditors estimates are likely lower than the actual increase, because the cost of health care is now expected to increase in the double digits as explained below. Such a mistaken actuarial assumption would result in even a greater liability to the District.

The District's $7.6 million unfunded but accrued liability for retiree health and welfare costs is particularly detrimental to the District's fiscal integrity, because health care costs are expected to rise significantly. The District will need to accumulate even more reserve monies to compensate for rising health premium costs in future years. The July 26, 2002

Fiscal Report published by the School Services of California, Inc. explained, "it is likely that double-digit costs will increase for the next 10 years." ("Experts Conclude Health Premium Costs to Escalate for the Foreseeable Future", The Fiscal Report. School Services of California, Inc. (7/26/02) Vol. 22, No. 15.) According to the Towers Perrin Health Care Cost Survey for 2003, health care costs for retirees under age 65 are expected to increase by 19%, and for retirees under the age 65 and older the expected increase is 17%. ("Health Care Costs to Rise 15 Percent for Businesses in 2003", MRO Today.) The health care costs for retirees under age 65 and Medicare-eligible retirees is higher than active employees. (MRO Today, supra.) Overall, the cost of health benefit plans will increase over 15% on average in 2003, and "this projected increase will be the highest year-over-year percentage increase since the [Towers Perrin Health Care Cost] [S]urvey began in 1989." ("Experts Predict 15% Rise in Health Insurance Costs Next Year", Managing the Cost of Health Care, Vol.18, Number 5, March/April 2003.) The CEO of Kaiser Permanente also warned that premium costs reductions that were available in the early 1990's would likely not be available again. (Id.) The cost of prescription drugs is likely to reach the highest annual percentage change per capita in health care funding in 2002-03 because an increase of 15.2% is expected. (Id.) This increase will especially affect Medicare-eligible retirees, because "[d]rug costs make up a larger share of the cost for Medicare-eligible retirees." (MRO Today, supra.)

In addition to these rising health care costs, the Managing Director of Health and Welfare for Towers Perrin noted that "employers are facing the highest increase in HMO renewals since the early 1990's." (Managing the Cost of Health Care, supra.) While the average HMO renewal rate increase for active employees is 15%, the HMO renewal rate increase for retirees under 65 and retirees 65 and older is greater than 20%. (MRO Today, supra.)

Health benefit experts recognize that no easy cure exists for the high cost of medical care and the resulting increase in premium costs to employers. (The Fiscal Report, supra.) The School Services of California concluded in its report that "cost increases for school district employers ... are unfortunately likely to continue to outstrip school district revenues and [thus] painful employee negotiations ... seem almost inevitable." (Id) Based on the findings in these reports, the District should not only refrain from dipping into the health and welfare benefit reserves already accrued in Fund 29, but should accumulate even more reserve monies to meet the inflationary cost increases for health benefit premiums.

Expected Deficits in State Retirement Funds

The Legislature and California courts have recognized that school district employees "are entitled to a financially sound retirement system [and a]... retirement fund stable and full funding over the long term." (CA Ed Code § 22955(d).) Despite the intention that retirement funds remain stable and full funding, the State Teachers Retirement System ("STRS") reported that the difference between the current and future value of its obligations is $2.2 billion. (Community College League of California State Budget Update #6 (2/7/03).) STRS' accrued but unfunded liability of $2.2 billion could increase to $47 billion over the next ten years. (Id.) STRS finished the "2000 fiscal year with a liability surplus of $9 billion, which swung to a liability deficit of $2.2 billion by the end of the 2001 fiscal year." (Id.) STRS calculates that the fund will have a $6.2 billion deficit by the end of 2010 if growth is at 8%. (Id) Based on the fact that the District's retirees over the next ten (10) years are at a significant risk of receiving deficited STRS retirement funds, the District should not only maintain but accumulate even more funds to meet the $7.6 million accrued but unfunded liability for retirees' health and welfare benefits. Otherwise, District retirees may receive little or no retirement funding from both the state and the District.

DISTRICT RESERVES SHOULD NOT BE USED TO FUND SALARY SCHEDULE INCREASES

Finance experts including Ken Hall, Barney Finley, and others throughout California have warned school districts for years that utilizing reserves for salary increases weakens the financial structure of a district. In some cases, funding salary increases with reserves has lead to receivership and bankruptcy. School districts such as Richmond Unified School District, San Jose Unified School District, and Oakland Unified School District have experienced threats to their educational systems due to faulty budgeting methods.

Given the state's current economic crisis and related uncertainty in state funding, it is imperative for the College of the Sequoias Community College District to exercise extreme caution over its reserve balance. This type of discretion regarding reserve account spending should be applauded. The District would like to follow a policy of conservative budgeting, rather than dipping into reserves (which is one time funding) to pay for salary increases (an ongoing and increasing cost), a practice all too familiar with other districts. The alternative would create a serious risk that the bank account would be depleted before additional income is received to satisfy the expense obligations.

The Governing Board has Discretion Over Amounts Needed for Reserves

In California School Emp. Assn, v. Pasadena Unified School Dist., 71 Cal.App.3d 318 (1977), plaintiffs alleged that defendant laid off employees for reason of a lack of funds. Plaintiffs contended this constituted unlawful action since there existed no lack of funds sufficient to justify the layoffs - defendant had sufficient funds in its undistributed reserves to maintain all classified employees in their former positions. In that case, plaintiffs argued there cannot be a "lack of funds" so long as a reserve account is in existence, Id. Essentially the argument means that there cannot be a lack of funds unless the school district is bankrupt. However, the court stated, *"[T]he determination of the amount needed for reserves is committed to the discretion of the governing board. Absent a showing that the determination of the amount of reserves is fraudulent, unreasonable and so arbitrary as to indicate an abuse of discretion as a matter of law, it will not be set aside by a court.* "Id. The Pasadena case stands for the idea that in the absence of any data suggesting fraudulent, unreasonable or arbitrary budgeting decisions the fact finder should provide proper deference to the District and School Board over reserve account balances.

In our situation, the District's exercise of discretion over reserve amounts is far from an abuse of its discretion. For fiscal year 2000-2001, the reserve balance reached 8.7% total budget. However, in the following year that figure dropped to an alarming level of 3.5%, hovering precariously above "watch list" status. This decrease in reserve amounts was based in significant part to previously unknown property tax adjustments and over budgeted payments to faculty for part-time and overload amounts of $1 million and $1.2 million, respectively. Yet another unaccounted for expense occurred as health care premiums increased by 37% over the previous year. The District has an obligation to maintain a reserve fund to ensure the health and welfare benefits of its employees, past, present and future. If not for the previously elevated levels of reserve funds the District would have already been in dire situation. Therefore, the District's former exercise of discretion to maintain a balance of 8.7% may not be seen as unreasonable, arbitrary, or fraudulent. Additionally, preserving funds for the provision of health and welfare benefits of current employees, and current and future retirees is a legitimate, reasonable and non-arbitrary concern.

Precisely for reasons related to such unclear or unpredictable expenses as these are school districts granted complete discretion over their reserve account balances. Following the court in Pasadena, as gatekeeper of reserve fund accounts the District shall maintain discretion over reserve fund balances to uphold its financial integrity, and in so doing preserve "the interests and welfare of the public and the financial ability of the public employer." See Gov. Code § 3548.2.

INCREASED COST OF THE ASSOCIATION'S CURRENT PROPOSAL

COSTA seeks an additional 1.0% increase in salary and a $300 stipend, above the 3.87% increase already implemented by the District. COSTA's total compensation package, including step/column and health and welfare enhancements, would total a 9.10% increase. Although the impact on the average teacher=s salary would be slight, the cost to the District would be an estimated $171,171 or 1.43% increase in total compensation. Implementation of the 1.43% increase would reduce the District's already low reserve fund level of 3.5% to a staggering 3.2%.

Additionally, any increase to the salary schedule would be an ongoing cost to the District and would create a compounded increase to the expenditure side of the District's budget. Any additional increase in excess of the current 3.87% raise, coupled with the increase cost of step, column, and health and welfare for a total increase in compensation of 7.67%, will send the District spirally downward to even greater deficit spending. Ultimately, this means that the District will have to pay for its over-expenditures - its deficit - out of its bank account. Sooner or later the bank account would be fully depleted.

The District has limited ability to pay the salary schedule increase demanded by the Association due to the increased cost over the term of the proposed agreement as well as compounded costs over future years.

DEFICIT SPENDING WOULD ULTIMATELY SPELL ECONOMIC DISASTER FOR THE DISTRICT

The Association's demand of a 1.0% increase (to the academic salary schedule and to the faculty overload salary schedule) and a $300 stipend, in addition to the 3.87% increase and step/column and health and welfare increases already implemented for the 2001-02 school year, will tumble the District into a downward spiral of continued deficit spending in order to fund the increase together with ongoing financial obligations. COSTA's demand equals a total compensation amount of 9.10%.

The Chancellor's Office has established criteria for monitoring a community college's financial condition. The first evaluation point is when a college's general fund balance falls below 5% of expenditures, referred to as the "prudent" level. At that point, other financial characteristics of the college are reviewed to see if that college should be placed on the Chancellor's "watch list." One of these criteria is whether or not the college's fund balance has fallen below the minimum percentage adopted by the college's Board. Once a college's general fund balance dips below 3% of expenditures, referred to as the "minimum" level, that college is placed on the "watch list", at which time the Chancellor's Office takes more detailed and thorough evaluation and monitoring steps. For three of the last five years, the College has been deficit spending in the general fund. According to budgets provided during those years, the deficit spending was not planned. The deficit for the 2001-02 year was significant enough to drop the College's ending balance below the Board's 6% policy and the state's 5% guideline. It is difficult to manage the College's finances with such fluctuations in the ending balance that are not predicted. This means that the deficits cannot be acted upon in a timely manner to mitigate the financial impact on the current and future years.

Fiscal Health Analysis, supra.

More importantly, the continued deficit projections for the near future, based upon current obligations of the District, could lead to depletion of the District's reserves which are currently needed to insure against foreseeable and actual liabilities now faced by the District. The District is at risk of being placed on the Chancellor's "watch list". Ultimately, deficit funding for pay raises would lead to the untenable position of bankruptcy or trusteeship. Such a foolhardy practice employed by the District would ultimately harm education for the District's students.

The Fiscal Health Analysis and Evaluation of Internal Controls Report recognizes that "[Rebuilding th[e] [District's] reserve balance will be challenging, with the increasing financial demands related to personnel and facilities and with the state's fiscal woes - all this in the face of ever-shrinking unrestricted funding." Fiscal Health Analysis, supra.

The District calls upon the Fact Finding Panel to carefully structure its findings and recommendations so as not to go beyond the ability of the District to pay salaries from its projected revenues. The adverse impact caused due to deficit spending should guide the Factfinding Panelists away from recommending a recipe for economic disaster for the District.

CONSERVATIVE BUDGETING PREVENTS ECONOMIC DISASTER EXPERIENCED BY GOVERNMENTAL ENTITIES SUCH AS ORANGE COUNTY

Orange County's recent, and ongoing, recovery from bankruptcy provides a lesson in prudent fiscal policy. In June of 1996, Orange County emerged from bankruptcy with a plan for county-wide restructuring. The plan included reducing staffing costs by eliminating 220 positions, increasing fund balances, and adopting a conservative approach to budgeting overall, with the result that, in September of 1999, Moody's Rating Service raised its rating for Orange County debts. In explaining the change, Moody's highlighted the recent trend of the County to increase its fund balances, 9.1% of revenues in fiscal 1997 and 11.1% in fiscal 1998.

The District can avoid the financial straits experienced in Orange County by prudent fiscal practices including budgeting salary increases within the District's ability to pay.

BUILT IN SALARY INCREASES THROUGH LONGEVITY

Aside from the increased costs resulting from increases to the salary schedule, other factors contribute to increased teaching costs.

- The salary schedule structure promotes employment of highly qualified, highly paid teachers.

  A predominant reason for the District's large budget expenditure of 85% for salaries and benefits is that a majority of the District's teachers occupy the higher steps in the salary schedule. The teachers' salary schedule pays a top step salary amount of $81,996.

  The District's generous salary schedule has attracted and maintained a fine teaching staff. Additional earnings under the District's proposal will be all the more favorable and valuable during the effective years of the proposed agreement.

- Teachers who stay with the District receive built-in salary increases merely through longevity. The District's salary schedule contains contractual built-in raises which occur annually and as teachers accrue additional college credit.

  Even disregarding any increases to salary schedule or health and welfare benefits, District teachers can generate their own salary increases simply through longevity and accruing additional education. From 1995-1996 through 2000-2001 and projected for 2001-2002 teachers have received a total average step-and-column increase of 12.7%, or an annual average of 1.81%.

  Step-and-column increases generate increased costs to the District even without any increase to the salary schedule itself, COLA distributions, or health and welfare increases.

For step one of the master's degree column, step ten and maximum step on the non-doctorate column, the District's rank is the highest among the Central 14 Community College Districts. The increased compensation for advanced education and additional years of experience helps the District to attract and retain the most highly qualified teachers. This principle is supported by an examination of the placement of teachers actually employed by the District: During the 2001-02 school year 12% of the District's 176 teachers are in the top step-and-column placement.

- More than 12% of the District's teaching force is in the top salary schedule placement. Consequently, the District must meet a payroll near the maximum possible with the current salary schedule.

FACULTY TOTAL COMPENSATION

	Salary Schedule Increase (%)	Step Longevity (%)**	Health & Welfare Cost Increase (%)	Total % Compensation	CPI (%)
95-96	3.07	1.7	0	4.77	1.4
96-97	3.56	2.11	0	5.67	2.3
97-98	5.50	1.7	.42	7.62	2.0
98-99	4.76	1.7	.22	6.68	2.5
99-2000	3.91	1.7	.57	6.18	3.1
2000-01	6.00	2.04	1.23	9.27	4.3
2001-02	3.87	1.75	2.05	7.67	3.0
		12.7	Totals	47.86	18.6
		1.81	Average/Year	6.84	2.68

COMPARISON OF TOTAL COMPENSATION PROPOSALS

The graph represents the current total compensation offers for 2001-2002 presented by the District and COSTA in an effort to reach a mutually advantageous collective bargaining agreement.

THREE-YEAR FINANCIAL PROJECTION SHOWS DEFICITS

When the District's management projects its finances over the next three years under COSTA's demand conditions, it shows a deficit which is not eliminated by anticipated cost of living adjustment from the state.

The District is currently facing deficit spending in the 2002-2003 fiscal year. Moreover, the District projects a mere $1,150,889 fund balance for the end of 2002-2003 fiscal year, and expects a $5,690,967 deficit fund balance in the 2003-2004 fiscal year.

As can be seen from the graph, Budget Projections - Unrestricted General Fund, even considering the District's current offer to the faculty, the District will nonetheless spiral into deficits beginning in 2003-2004, 2004-2005, and 2005-2006 given its assumptions including step and column percentage pay increases.

The following chart and graph represents the projected income and expenses of the College of Sequoias Community College District for the fiscal years 2002-2006. The District projects accruing deficits in each of the following fiscal years based upon the best information available at this time.

District's Projected Fund Balance 2002-2005

FISCAL YEAR	PROJECTED FUND BALANCE
2002-2003	$1,150,889
2003-2004	< $ 5,690,967 >*
2004-2005	<$ 16,849,270 >*
2005-2006	< $ 29,602,008 >*

* Deficit balance

The Fact Finding Panel should not recommend expenditures that would lead to deficit financing the District's budget as to do so will ultimately lead to an adverse impact on the welfare of the institution as well as the public.

CONCLUSION

The District's status quo on compensation provides economic stability for teachers. The District will not have to balance its budget by laying off more employees and cutting back services to students in order to maintain the status quo as proposed by the District. Economic changes have created uncertainty with respect to future funding for California school districts. The District's proposal to maintain the status quo (i.e. the 3.87% salary increase that has already been implemented):

1. Exceeds that of other comparable districts,

2. Provides economic stability for District teachers without increasing the risk of more layoffs,

3. Is barely within the District's ability to support by revenue for this year and future years,

4. Recognizes that teachers' salaries have increased at approximately double the increase in cost of living over the past six years; and

5. Safeguards the interests and welfare of the public and the financial ability of the public school employer.

ASSOCIATION POSITION AND ARGUMENTS

The District and the Association knew all the arguments and statements listed above when the disputed contract language was negotiated. The only new item was the information that the Board of Education received regarding the uncertainties of the State funding of the district activities.

FUND BALANCES AND RESERVES

The District knew the fund balances in the numerous reserve accounts amounting to about 10 Million dollars. The College of the Sequoias is in the enviable position compared to most college Districts. They have "reserves" and are not in a true financial crisis as the staff argues.

NO FISCAL CRISIS EXISTS

The District has the funds to grant the 1% plus $300, per teacher, a total of $171,171. At the time of the fact finding hearing the district had sent layoff notices to the equivalent of eighty-five full time faculty members. The District is saving over 4 million dollars by reducing the faculty; assuming that the average salary is $50,000 the district will be saving over four million dollars.

There are nine confirmed retirements would provide additional savings of over $450,000.

PRIORITIES

The dilemma for the Board is that they do not choose to allocate the funds to negotiated salary increases. The District did not establish that it suffers a true inability to pay but merely offered that it had different priorities for the more than adequate resources available.

The governor's May revised budget restored significant amounts to the community colleges, making the districts claim of an inability to pay unsupportable.

ABILITY TO PAY

The evidence does not support the District's claim of an inability to pay.

Estoppel should prevent the District from claiming an ability to pay defense. The argument was raised after the agreement was negotiated. The College of the Sequoias now claiming poverty raises the specter that the District never bargained in good faith and had they done so would have afforded the Association the ability to counter the claim.

FACT FINDING CHAIR'S COMMENTS

The College of the Sequoias Teachers' Association argued that the District never raised the issue of "ability to pay" during the bargaining process, nor during the mediation, and never claimed an inability to pay until the **day after the tentative agreement had been reached**, (emphasis added by Chair)

The Association asserts that the District is estopped from raising the "ability to pay" argument at this juncture and the Chair should preclude this issue from the decision-making process.

DISTRICT RAISING "ABILITY TO PAY" AT FACT FINDING

The Chair has served on numerous fact findings since the Act was adopted. The question raised by the Association [Is the District estopped from raising "ability to pay" at the Fact Finding hearing?] is a matter of first impression for the Chair. Neither party presented any case law or PERB decisions for the Chair to review to assist in the decision-making process.

The Association asserts that there was never a claim of the inability to pay until the day after the tentative agreement had been reached.

The Board made a determination not to approve the tentative agreement based on financial information they received from the state after the negotiators had signed off on the tentative agreement. This gives the Chair the impression that it was the Board's action that raised the "ability to pay" question.

The Chair believes that the Board, in making the final decision as to matters that bind the District, is in a position to evaluate their finances prior to adopting any agreement or policy. This is within the authority of the Board and is a duty imposed upon them when making decisions affecting the District. In this matter, the Board made a determination that they did not have the financial ability to meet the tentative agreement. This decision imposed on the staff a determination that the District did not have the ability to pay.

The Association argues that it is a matter of allocation of resources. The Board chose not to accept the "tentative agreement," even though they believe there is an ability to pay.

FINDING ON RAISING ABILITY TO PAY AT FACT FINDING:

The District may raise an "ability to pay" issue at any time prior to the acceptance of the "tentative agreement."

WAS THE NEGOTIATED AGREEMENT BINDING ON THE DISTRICT?

The negotiated agreement provided that those that were to receive the negotiated increase were "each faculty member of the bargaining unit in a paid work status on the date this **agreement** is **ratified and approved."** (emphasis added by Chair)

FINDING REGARDING NEGOTIATED AGREEMENT BINDING:

The Board did not "ratify and approve(d)" the proposed negotiated agreement. Absent the approval by the Board, the agreement is not binding on the District.

PAYMENT OF TERMS OF THE TENTATIVE AGREEMENT

The parties informed the Chair that the cost of the disputed language is $171,171.

The "new" element in the process that led to the District Board's refusal to accept the negotiated agreement was the statement by the state that the funds the District could expect to receive would be reduced from last year's allocations. This information led the Board to take actions regarding their fiscal position. Programs and staff were reduced, retirements were encouraged, and other measures were taken to meet the anticipated loss of revenue from the state. The actions of the Board achieved substantial savings for the District. "The District is saving over 4 million dollars by reducing the faculty, assuming that the average salary is $50,000. There are nine confirmed retirements that would provide additional savings of over $450,000."

The District maintains several "reserve" or special allocated funds. The total of these funds exceed 10 million dollars (as of 3/31/03). The state or federal government does not restrict these funds, except the H.S.I, fund. The funds are available to the Board for expenditure, as they deem appropriate. The balance in the H.S.I, fund was $479,156. Of this amount, the District showed that the District without penalty could use only $14,578. This would reduce the balance of the funds by $465,000 +/-, or reduce the total of the funds to approximately 9.5 million dollars +/-.

The District argues that they should not be placed in a position of using these funds for salaries or other ongoing costs that will place the District in financial peril in the future because of the lack of annual revenues to cover the recurring costs. Using the reserves could solve the immediate situation but lead to shortages next year and in following years.

This is a valid argument by the District. However, the District has managed to affect other savings that reduces the future year expenditures. The Board's prompt and prudent attention to the prospective shortfalls in District revenue led to savings due to retirements and reduction of staff and programs. These savings are within the General Fund activities.

The Board's allocation of the funds available is a decision that only the Board can make. The question is: Does the Board choose to place the funds available into teacher salaries or other programs/activities?

FINDING AS TO ABILITY TO PAY TERMS OF TENTATIVE AGREEMENT:

The parties at the hearing pointed out that the cost of the increase being sought

is:

176 Faculty members x 300=	$52,800
1% on salary scale	118,371
TOTAL	$171,171

The Chair, after reviewing the information provided, is of the opinion that there are sufficient funds to pay the $300 per teacher, a total of $52,800. That is a one-time payment. There is not a continuing, recurring liability in future years.

The 1 % on the salary scale, totaling $118,371, is available within the General Fund based on the savings mentioned above. This salary increase, if implemented, will impact future years revenue allocations requiring the Board to make a determination as to the allocation of funds this year and in future years.

The Chair finds that the District has the financial ability to pay the increase of $171,171.

PANEL RECOMMENDATION:

The District has the financial ability to pay the increase of $171,171.

DATED: July 12, 2003

Respectfully submitted,

JOE H. HENDERSON
Chairperson

D Concur

D Dissent

DATED: July_____, 2003

JOSEPH P. ZAMPI
District Panel Member

☒ Concur

• Dissent

DATED: July 16 . 2003

ALAN J. FREY
Association Panel Member

PANEL RECOMMENDATION:

The District has the financial ability to pay the increase of $171,171.

DATED: July 12, 2003

Respectfully submitted,

JOE H. HENDERSON
Chairperson

• Concur

X Dissent

DATED: July _31_, 2003

JOSEPH P. ZAMMIT
District Panel Member

• Concur

• Dissent

DATED: July_____, 2003

ALAN J. FREY
Association Panel Member

Law Firm of
Zampi and Associates
225 Broadway, Suite 1450
San Diego, California 92101

JOSEPH P. ZAMPI

SUPERVISING ATTORNEYS
GERALD B. DETERMAN
REX RANDALL ERICKSON
MARTIN A. HOM

ASSOCIATES
DANIELLE G. SCHULTE
SANDRA L. BROWNELL
N. JOSEPH TROFEMUK. JR.
ARLENE M. MILO
CHRISTOPHER B. DESAULNIERS
INDU SEN
THERESA W. HURLBURT
MARC APPLBAUM
LINDSEY O'NEILL
MICHAEL SALANICK

(619)231-9920
(800) 864-8111
FAX (619) 231-8529
e-mail law@zampi.com

NORTHERN CALIFORNIA OFFICES

BURLINGAME;
500 AIRPORT BLVD.. STE. 100
BURLINGAME, CA 94010
(650) 375-1907

SACRAMENTO
331 J STREET. 1200
SACRAMENTO. CA 95814
(916) 446-6397

July 31, 2003

Client No. 444.06

Mr. Joe H. Henderson
Factfinding Panel Chairperson
P.O. Box 463
Santa Rosa, CA 95402

Re: CSMCS No.: 02-2-351; P.E.R.B. No's.: SA-IM-2671-E and SA-RR-295-E

Dear Mr. Henderson:

Please find enclosed my concurring and dissenting opinion with regard to the draft factfinding report from Chairperson Henderson.

The dispute between the College of Sequoias Community College District and the College of Sequoias Teachers Association has lingered for a substantial period of time. While my concurrence reflects several key aspects of the recommendations from the Factfinding Panel, nonetheless, I feel the necessity to dissent over some recommendations made by the Factfinding Chair, as I believe they are not supported by the evidence and do not comport with the statutory criteria found in the Education Employment Relations Act. My dissenting opinion and analysis has been combined with my concurring opinion on other specific matters as I do believe the Factfinding Panel deserves credit for the effort it has made in attempting to resolve this protracted dispute.

Notwithstanding my dissent with regard to the items set forth in my opinion, I wish to express my thanks for the diligence and cooperation shown by each of the panel members.

Sincerely,

Joseph P. Zampi

JOSEPH P. ZAMPI, ESQ., #110168
Law Firm of Zampi and Associates
225 Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 231-9920
Facsimile: (619) 231-8529

Attorney for Respondent,
College of the Sequoias Community College District

IN THE MATTER OF FACTFINDING
CHAIRPERSON JOE H. HENDERSON

COLLEGE OF THE SEQUOIAS TEACHERS' ASSOCIATION **V.** **COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT**	**Case No. SA-IM-2671-E**

POST FACTFINDING CONCURRING AND DISSENTING OPINION COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT

INTRODUCTION

This concurring and dissenting opinion is intended to identify those issues for which I believe it appears the Factfinding Chairperson's recommendations are and are not supported by the evidence and the statutory criteria found within the Educational Employment Relations Act (EERA), Government Code section 3548.2. I have reflected upon those areas for which I provide my concurring opinion to the extant that I do believe the recommendations of the Chair are appropriate. The concurring and dissenting opinion is intended for attachment to and incorporation within the

"FACTFINDING REPORT AND RECOMMENDATIONS" of Factfinding Chairperson Joe H. Henderson.

CONCURRING OPINION

E concur with the opinion and recommendation of the Factfinding Chairperson regarding the issues which follow:

Raising "Ability to Pay" At Factfinding

I concur with the opinion of the Factfinding Chair that the District may raise an "ability to pay" issue at any time prior to the ratification of the "tentative agreement". The Board is in the best position to evaluate District finances prior to the adoption of a tentative agreement regarding a prospective salary increase. The Board did not ratify the tentative agreement, in part, due to the current state budgetary crisis and its impact on the District's current and future fiscal health.

Negotiated Agreement Non-Binding

I concur with the opinion of the Factfinding Chair on this issue. Even the terms of the agreement suggest that it shall not become effective until approved by the Board. The agreement sets forth as a date to determine which faculty members would receive a salary increase "the date this agreement is ratified and approved." Since the agreement never gained Board approval it cannot bind the parties to any terms included therein.

District's Financial Ability to Pay One-Time Cost

I concur with the opinion of the Factfinding Chair that the District Board may determine to allocate funds for a one-time nonrecurring expenditure depending upon its decision regarding allocations to salaries, programs and activities. The Factfinding Chairperson has calculated this cost of a one-time payment of $300 for each qualifying faculty member as $52,800. Given the relatively small size of this amount as compared to the District's budget it is difficult to argue with this position, namely that the Board may determine the allocation of such amount. However, to meet this cost the District must draw monies from either the General fund, reserve fund, or special fund. I concur insofar as the Board may determine that monies may be available to fund the one-time costs of $300 in respect to the salary increase issue provided the Board retains the right to determine whether this allocation shall be applied to salaries rather than other student programs or activities.

Using Reserves Could Lead To Future Shortages

I concur with the opinion of the Factfinding Chair that using reserve funds for recurring salary increases could lead to shortages next year and in following years depleting reserve fund accounts. Reserve fund accounts generally are not the recipient of a consistent and on-going revenue stream. The District must maintain balances in each reserve fund to meet the costs or expenses assigned to each fund category. Depleting or reducing any of the reserve fund account balances could be perilous to the programs relying on the availability of monies in the reserve account to provide for its expenses. A revenue stream does not exist to immediately replace the diminished fund balance in the event these a reserve fund accounts are, reduced.

The Board Has Absolute Discretion Over Its Budget

I concur with the Factfinding Chair on this issue. The Factfinding Chair noted that the Board has the authority to make final decisions that may bind the budget, and that it is the

Board's duty to evaluate District finances prior to adopting any agreement or policy. (Factfinding Report and Recommendations at page 28). Moreover, the "Board's allocation of funds available is a decision that only the Board can make." (Factfinding Report and Recommendations at page 30). The Board is granted such authority so that it may serve the public welfare and protect the interest of the community and its students.

DISSENTING OPINION

I dissent to the opinion of the Factfinding Chairperson on the issues which follow:

Entitlement

The Association Never Satisfied Its Burden to Establish Entitlement.

The Factfinding Chairperson's recommendations do not include any comments to or an analysis of the Association's lack of entitlement to an additional salary increase. It is a well-established principle of labor contract negotiations that the burden of proving entitlement to a salary increase rests with the union organization. Without offering any evidence or support in this regard, it appears as though the matter was never considered by the Association. Accordingly, the Association altogether has failed in its burden to establish entitlement to an amount of salary increase which exceeds the existing 7.67 % increase in total compensation for 2001-2002. Notwithstanding a factfinder's duty to consider the "interests and welfare of the public and the financial ability of the public school employer," it is worth noting that at least half of the criteria established by the state legislature for use in arriving at findings and recommendations specifically relate to the entitlement process. In relevant part, Government Code section 3548.2 states:

> (b) In arriving at their findings and recommendations, the factfinders shall consider, weight and be guided by all the following criteria:
>
> (3) The interests and welfare of the public and the financial ability of the public school employer;
>
> (4) Comparison of the wage, hours, and conditions of employment...with other employees generally in...comparable communities;
>
> (5) the consumer price index (CPI) ... commonly known as the cost of living;
>
> (6) the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization- benefits;... and all other benefits received.

In consideration of the factors listed above, the District has offered substantial and relevant evidence supporting the reasons why the Association is not entitled to an additional salary increase. An analysis of the statutory criteria regarding entitlement to salary increases, including a comparative analysis of salary/total compensation increase to the CPI, a historical analysis of salary increases and total compensation, and a review of salary increases among comparable employer school districts, is not only useful but necessary and statutorily required for investigating and arriving at findings on the entitlement issue. The District's total compensation package for 2001-2002 already includes an increased total compensation of 7.67 %. The change in total compensation represents a 200 % increase over the California CPI for the year 2001-02. Historically, for each year of the past seven years, the District's total compensation package has doubled (and in some cases tripled) the CPI for each respective year.

Another factor unaccounted for in the factfinding recommendation is the District salary increase in respect to increases among comparable districts. Once again, the District has offered data from which the Factfinding Chair might consider and analyze the comparable employer school districts' salary increases relative to the College of Sequoias. The College of Sequoias' salary increase place it above or significantly above average comparison to the remaining Central 14 community college districts, and the District either meets or exceeds the average salary increases among all comparable employers.

That which follows represents the basis on which the Association has not met its entitlement burden:

- Association proposal contemplates 9.10 % increase in total compensation for 2001-02, while the District already has provided a 7.67 % increase in total compensation for 2001-02. The CPI for 2001-02 is 3.0 %.
- Total compensation increases have more than doubled the CPI for the past 5 years.
- The District average total compensation increase is 7.48 % per year since 1997-98.
- The annual average salary schedule increase has been 4.81 % while the CPI averaged 2.98 % per year since 1997-98.
- The district ranks at or above the mean and median when

comparing various salary step and column placements among comparable employer school districts. 1st highest compensation for Master Step One among comparable districts. 4th highest compensation for Step Ten, Non-doctorate among comparable districts. 5th highest compensation for Non-doctorate Max No Longevity among comparable districts. 6th highest compensation for Non-doctorate Max with Longevity, and 6th highest for Highest Earnable Salary among comparable districts.

During the Factfinding Hearing, the District supplied ample support to show that the Association is not entitled to a salary increase in addition to the compensation total of 7.67 %. While the Association has not refuted any of the District's credible evidence an the entitlement issue, neither has the Factfinding Chair made a recommendation on the issue. Accordingly, I am left to infer that the Association has not met the burden of proving entitlement and shall not be entitled to an additional salary increase since the burden of proving entitlement has not been satisfied.

ability to Pay

finding "Sufficient Funds" Ignores the District's Evidence and statutory Criteria of the EERA.

The FACTFINDING REPORT AND RECOMMENDATIONS state that sufficient funds exist in the General Fund to provide for the requested ongoing and recurring expense of 1% increase on the salary scale assumes monies are ostensibly available following from the District's reduction in services and layoffs necessitated by the continuing state budget deficit.

Upon review of the recommendations, the Factfinding Chair appears to agree with the Association's contention that the District has an ability to pay the increase although it has decided against exercising that ability. Arguing for the District's ability to pay, the Association points to evidence of a large balance in the reserve fund and special fund accounts. However, such a specious argument should be guarded against, since upon further examination it is in conflict with the District's absolute discretion to ensure and protect the interests and welfare of the public and the financial ability of the public school employer.

The EERA requires consideration of "any other facts. . .which are normally or traditionally taken into consideration in making the findings and recommendations." Those "facts" may include the disastrous state budget crisis, loss of funding, the 2001-2002 District budget deficits of 2.2 million from faculty/overload and property taxes, and the continued yet still unknown extent to which all this will impact and be felt by the District. Since the reserve funds and special funds have been previously allocated for specific programs and expenditures, it is fiscally irresponsible to draw from those funds for recurring costs during a time of failing revenue streams.

Additionally, the reductions in District expenditures evidenced by the Factfinding Chair (via faculty layoffs, retirement, and program reduction), and which presumably account for the availability of monies from "savings" possibly used to fund a salary increase, should not be treated so casually. These cuts have involved reductions in services which ultimately impact the interests and welfare of the public, including the students matriculating at the College of Sequoias Community College District. Simply suggesting there exists sufficient funds from monies saved through the reduction in services and faculty layoffs caused by an impending budget crisis fails to recognize the depth of the budget crisis. Funding existing faculty salary increases through faculty layoffs was never the intention of the District program reductions brought on by the budget crisis and the necessity to decrease expenditures. Students and faculty alike have suffered through these reductions, yet they have done so notwithstanding the District's effort to continue to meet its fiscal obligations, ultimately with the public welfare at stake.

Moreover, the District should not be requested to spend from monies previously allocated to other programs and services - resources allocated in the interests of public welfare, the community and its students - especially when a revenue stream does not exist to replace those funds. The Factfinding Chairperson has already agreed with the District insofar that spending reserve funds during such time of unprecedented budget cutbacks is fiscally irresponsible (Factfinding Report and Recommendations at page 30). The Factfinding Chair recommends that sufficient funds exist and that the District has the financial ability to pay, but the decision of whether to spend on a salary increase or program expenses is left with the District/Board . In this regard, the District dissents to the recommendation that sufficient funds,exist to fund the proposed an on-going 1% salary increase but concurs with the opinion that the Board has the sole authority to determine whether to allocate more funds to salaries, programs and/or activities.

/////

Actual Savings from Layoffs, Retirements and Non-reelections are Far Less than Projected.

As noted above, the Factfinding Chair concluded that the District has sufficient funds to pay for the salary increase, including monies believed to exist in the General Fund. In particular, the recommendations suggest that the General Fund may be used to provide for the increase of 1% on the salary scale (or $118,371 ongoing expense). However, this conclusion is questionable as it is based on projected savings achieved from 83 faculty layoffs and nine confirmed retirements which the Factfinding Chair calculates to be a total savings of approximately $4,450,000. In reality, the actual total number of confirmed retirements and laid off employees which occurred after the Factfinding Hearing had concluded was far less, and the related savings only approximately $1,479,246 derived from fifteen (15) retirements, two (2) non-reelections, and three (3) layoffs.

The actual amount of savings is roughly $3 million less than the $4,450,00 million that had been projected at the time of the Factfinding Hearing and cited in the FACTFINDING REPORT AND RECOMMENDATIONS. Recognizing that the Factfinding Chair would have been unaware of these actual numbers at the time of the Factfinding Hearing of April 29, 2003, nonetheless the revised figures cast considerable doubt on the current status of the recommendation stating that the District has the financial ability to pay the increase of $171,171.

/////

/////

/////

<u>CONCLUSION</u>

In conclusion, while I believe the Factfinding Panel should be commended for its effort and diligence in these matters, I have offered my concurring and dissenting opinion on the issues stated above. The FACTFINDING RECOMMENDATIONS AND REPORT are not necessarily a blueprint to a final settlement, and I hope that my latest opinions will be considered in this process.

By any standards, including those set forth in the Educational Employment Relations Act, the District's already provided faculty total compensation increase of 7.67 % for 2001-02 is substantial and equitable, particularly in light of the current state budget and the District's waning revenue stream; it can hardly be said that the District has acted unreasonably.

The College of Sequoias should not be required to fund salary increases from savings instituted to insure its financial health through economically disastrous times. Neither the special or reserve funds, nor the General Fund, is suitable to withstanding spending for an ongoing recurring salary increase.

Respectfully submitted,

Dated: July 31, 2003 LAW FIRM OF ZAMPI AND ASSOCIATES

JOSEPH P. ZAMPI, Attorney for Respondent
College of the Sequoias Community College District